

EXHIBIT D



STEFAN M. LOPATKIEWICZ
(202) 442-3553
lopatkiewicz.stefan@dorsey.com

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BY MAIL, FACSIMILE AND EMAIL

Mr. Alex Starr, Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *General Communication, Inc. v. Interior Telephone Company, Inc.*
Request for Inclusion on the Accelerated Docket

Dear Mr. Starr:

As requested by your letter dated May 9, 2007, Interior Telephone Company, Inc. ("Interior"), by its undersigned counsel, hereby responds to the request of General Communication, Inc. ("GCI") for initiation of an Accelerated Docket for the consideration of GCI's proposed complaint against Interior alleging that Interior has violated Section 51.715 of the Commission's Rules by refusing to provide interconnection to GCI on an interim basis at Interior's Seward, Alaska exchange. As will be explained in detail below, Interior opposes GCI's request for initiation of an Accelerated Docket on the ground that the request represents an inappropriate effort to preempt, disrupt and circumvent the statutory procedure under Section 252 of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 252, for negotiation of the terms and conditions of interconnection between Interior and GCI.

Contrary to GCI's assertion, Section 51.715 of the Commission's Rules provides only for the imposition of interim interconnection *rates* for transport and termination of traffic when the parties to an interconnection negotiation are unable to agree on such rates. In this case, no such dispute over rates exists; the parties both agree to exchange traffic on a bill-and-keep basis. They have not, however, agreed on the other terms for interconnection of their networks in Seward, which terms are now under active negotiation. Because GCI's effort to utilize Section 51.715 for a purpose for which it was not intended presents a novel legal issue of a complex and unprecedented nature, Interior filed with the Commission a Petition for Declaratory Ruling to clarify the scope and purpose of the rule. Interior's Petition was filed on May 3, 2007, *prior to* GCI's request to the Enforcement Bureau for initiation of an Accelerated Docket.

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Under these circumstances, use of the Accelerated Docket procedure under Section 1.730 of the Commission's Rules would be inappropriate, as the Commission must first determine whether there is any merit to GCI's interpretation of Section 51.715 before a basis would exist for a complaint procedure against Interior to move forward. In addition, GCI's request is premature in that GCI's authority to commence providing local exchange service in Seward will not become effective until August 1, 2007, and GCI is assuming without foundation that the statutory negotiation process, now underway, will fail before it has even given that process – to which it independently agreed contractually with Interior – to run its course. Finally, initiation of an Accelerated Docket would be unfair to Interior under Section 1.730 of the Commission's Rules in light of the overwhelming disparity in the resources of the parties to this dispute. By requiring Interior to divert scarce human and financial resources to the conduct of an Accelerated Docket complaint procedure, GCI would effectively hinder Interior from focusing its efforts on completion of a successful negotiation of the pending interconnection agreement with GCI, thereby effectively bringing about the very harm against which GCI purports to complain.

I. *Construction of Section 51.715 of the Rules is the Subject of Another Proceeding Before the Commission Requiring Resolution Before GCI's Complaint Can Move Forward*

Contrary to the hypothesis underlying GCI's request for an Accelerated Docket, its dispute with Interior regarding the interpretation of Section 51.715 is anything but "a straightforward factual case for prompt enforcement." As explained in Interior's Petition for Declaratory Ruling, which is attached as an exhibit to both Interior's letter to you of May 7, 2007 and GCI's supplement to its request for Accelerated Docket in this matter filed that same date, GCI is attempting to impose on Interior an interpretation of Section 51.715 which materially exceeds the rule's scope. Section 51.715 by its express terms concerns "interim transport and termination pricing." Its provisions focus on alternative interim pricing formulae the competitive carrier is entitled to utilize pending the state commission's establishment of applicable rates for the transport and termination of local traffic, and provides for a true-up procedure to the extent the interim rates differ from those ultimately established by the state commission or through agreement of the parties or by arbitration. 47 C.F.R. §§ 51.715(b-d).¹

¹ GCI argues in its Request for an Accelerated Docket (page 4, n.2) that Interior's reading of Section 51.715 as restricted to the establishment of interim rates would render "superfluous and duplicative" Section 51.707 of the Commission's Rules, because, it states, that provision concerns the establishment of interim prices for transport and termination pending adjudication of TELRIC rates. This is not true. Section 51.707 addresses default proxies that state commissions may establish for transport and termination rates when they are unable to adopt rates for the incumbent local exchange carrier. The default proxy procedures of Section 51.707 are, in fact, incorporated by reference into Section 51.715(b)(2-3). In this regard, the two provisions are written by the Commission to operate in tandem with one another and are, therefore, consistent with one another under Interior's interpretation of Section 51.715.

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Because the parties in this case are not disputing the rates to be charged, and are not awaiting the outcome of a state commission rate proceeding, the terms of the Rule are not applicable to their relationship. GCI, in fact, admits in its Request for an Accelerated Docket (page 2) that transport and termination rates are not at issue in its negotiation with Interior.

Interior's Petition also explains that the Commission, in its *Local Competition Order* adopting Section 51.715, presumed that the only point of disagreement between the parties negotiating an interconnection agreement would be the rates by which traffic would be exchanged, and developed the rule to provide protection to the competitive entrant in that specific situation. See Petition for Declaratory Ruling, at 7-10. In its Request for an Accelerated Docket (page 3), GCI quotes out of context the *Local Competition Order* as requiring incumbent local exchange carriers, upon request from competitive entrants, to provide "transport and termination of traffic, on an interim basis," but fails to complete the key qualifier in the Commission's quoted statement: "pending resolution of negotiation and arbitration regarding transport and termination prices and approval by the state commission." Transport and termination prices are not at issue between GCI and Interior.

Indeed, the Commission expressly cited its authority under the Act to adopt interim pricing terms as justification for its adoption of Section 51.715. Petition for Declaratory Ruling, at 8, n.8. Thus, the restriction of Section 51.715 to pricing issues was, in Interior's view, deliberate, representing the Commission's care in establishing a mechanism to expedite the introduction of competition that remained consistent with the general requirement for negotiation and arbitration of interconnection agreements prescribed in Section 252 of the Act. In this regard, the aggressive gloss that GCI attempts to impose on the rule would strain the limits of the Commission's authority in implementing Section 252 by reading it as a general alternative to the statutory directive for negotiation and arbitration. This is an intention that the Commission itself has not claimed for the rule. GCI is, in fact, candid in its request for an Accelerated Docket (page 3) that it is seeking to devise a means to enter Interior's local market in Seward without completing the statutory negotiation and arbitration process.

Viewed in this light, the parties' conflicting interpretations of Section 51.715 can be understood to join a novel and complicated legal issue requiring the full Commission's consideration. It is not an issue that the Enforcement Bureau should attempt to resolve on its own. 47 C.F.R. §0.311(a)(3). Thus, any effort to settle this question through a complaint procedure would be inappropriate, and GCI's suggestion that the question be assigned by the Bureau to an Accelerated Docket is wholly without merit. In its *Second Report and Order*² in Docket 96-238 adopting the Accelerated Docket procedures, the Commission noted that, where the Enforcement Bureau addresses a novel or complex legal issue in the context of a complaint proceeding, it has authority only to make a "recommended" decision to the full Commission.

² *Amendment of Rules Governing Procedures to be Followed When Formal Complaints Are Filed Against Common Carriers*, 2d Report & Order, FCC 98-154, released July 14, 1998, ¶ 101.

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Indeed, the issue presented here is one on which the Commission might even seek public comment.

As a result, in the present case where a decision by the full Commission regarding the legal construction of Section 51.715 will be required in any case, there would be little practical benefit to the Bureau establishing an Accelerated Docket for resolution of the issue. Instead, resolution of Interior's Petition should be allowed to run its course, and GCI's draft complaint held in abeyance in the meantime. In short, the issues presented in this proceeding are not suited for resolution under the constraints of the Accelerated Docket. 47 CFR § 1.730(e)(3).

II. *The Open Factual Issues Between the Parties Should be Resolved by Negotiation, Rather Than by Means of a "Mini Trial"*

After admitting that the parties' disagreement regarding the scope of Section 51.715 requires in the first instance resolution of a "a pure question of law," GCI suggests that the single factual issue remaining concerns whether GCI's existing trunk facilities in Seward used for the exchange of long distance traffic can be utilized for the interconnection of local exchange services (Request for Accelerated Docket, pages 6-7). This representation, however, attempts to paper over the substantial number of operational details that the Parties must still work out regarding how they will conduct the exchange of traffic. As explained in Interior's Petition for Declaratory Ruling, these details include the parties' definition of a point of interconnection; determination of whether they will permit transiting and toll traffic over the interconnection; agreement on procedures for forecasting anticipated service orders; establishment of a process for scheduling, confirming orders, and rescheduling and cancellation of service; determination of priority for restorations in the event of major outages; agreement on the use of CPNI; how 411 calls will be routed; how 911 or E911 calls will be handled and responsibility for updating the E911 data base; and establishment of processes for handling customer trouble reports.

These and numerous other operational details are addressed in a substantial draft interconnection agreement that GCI has proposed as the basis for the parties' negotiation under Section 252 and pursuant to their agreement to conduct good faith negotiations. A copy of that draft is attached to this response as Exhibit A, demonstrating the volume and specificity of detail with which GCI intends to address its interconnection needs with Interior. It bears emphasis that this is GCI's proposal of the terms that will need to be agreed for the parties' to effect their interconnection, *not Interior's*. Interior is at this time digesting and responding to GCI's proposal for interconnection. In its draft complaint (¶¶ 39, 41-42), GCI takes the position that the portions of its draft agreement relating to interconnection are "not complicated," and will require little "substantive negotiation" by the parties. This self-serving position, however, presumes what portions of the agreement are material or "substantive" to the other party to the negotiation – Interior. An agreement of the parties is based on all provisions within the document's four corners. It does not advance a meeting of minds to demand that some provisions of the final contract be agreed upon in isolation from the remaining ones. Most

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importantly, there is no disagreement between the parties regarding what rates will be used for the transport and termination of traffic, the only issue governed by Section 51.715 of the Commission's Rules on which GCI relies.

It is difficult to understand the efficacy of attempting to work through operational terms of the nature ITC has identified by means of the discovery, depositions and "mini trial" contemplated under Section 1.730 of the Rules, as GCI proposes to do. Instead, Interior submits that such issues properly lend themselves to resolution through negotiation, as the framework established in Section 252 of the Act directs. In this case, resort to the Accelerated Docket would not expedite the initiation of interconnection in Seward, but rather will disrupt and retard the established procedure for achieving that result. Thus, GCI's Request fails to meet the criteria of subsections (e)(2), (3) or (6) of Section 1.730.

III. *GCI's Complaint and Request for Accelerated Docket Are Premature*

On December 20, 2006, GCI and Interior signed an agreement for the parties' conduct of negotiations of an interconnection agreement addressing Interior's obligations under Sections 251(a) and (b) of the Act (Exhibit 3 to GCI Request for Accelerated Docket). In that contract, the parties agreed to a 120-day period for completion of their good faith negotiations, commencing on January 24 and ending on May 24, 2007, following which either party may seek arbitration of unresolved terms. Since the signing of the agreement, the parties have agreed to extend the period of negotiation until June 1, 2007.

GCI delivered to Interior the draft document on which the parties are conducting their negotiations on March 12, 2007. On April 6, 2007, before Interior had even responded to any of the draft terms presented, GCI delivered its demand that ITC commence "interim interconnection" in the Seward exchange beginning on June 18, 2007 (Exhibit 4 to GCI Request for Accelerated Docket). On April 13, 2007, Interior responded to GCI's demand, explaining that, in its view, Section 51.715 of the Commission's Rules applies only to the provision of interim rates for transport and termination of traffic, and asking how could GCI begin to provide local exchange service in Seward prior to giving the Regulatory Commission of Alaska ("RCA") and Interior the 90-day notice required by its authorization from the RCA (Exhibit 5 to GCI Request for Accelerated Docket).

By letter dated April 24, 2007 (Exhibit 6 to GCI Request for Accelerated Docket), GCI renewed its request for "interim interconnection" effective June 18, 2007, and explained in a footnote at the end of the letter that its requirement for "interim traffic exchange" by that date was to provide "some time for testing prior to GCI's commercial launch." It then stated that it would provide Interior with 90-days notice, as required by the RCA, prior to launching "commercial service" in Seward. There then followed an exchange of email correspondence between the parties in which Interior sought to clarify whether GCI really required an interim interconnection agreement to begin the exchange of "live" traffic to customers, or whether GCI's

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needs could be satisfied by agreement on a testing schedule. On May 3, 2007, after the filing of Interior's Petition for Declaratory Ruling with the Commission, Interior received GCI's official notification to the RCA that it intends to begin commercial local exchange service in Seward effective August 1, 2007 (Exhibit 10 to GCI Request for Accelerated Docket).

GCI's May 3, 2007 notice to the RCA and its Request for Accelerated Docket filed with the Commission the following day now make clear that GCI is seeking the commencement of an "interim interconnection" agreement with Interior as of August 1, 2007. Given the fact that GCI contractually agreed with Interior to conduct good faith negotiations for conclusion of an interconnection agreement covering the Seward exchange through May 24, 2007 (now extended until June 1), and that the parties are now engaged in active negotiation of the terms of that agreement, GCI's petition seeking an "interim" interconnection two and a half months from now, under a strained reading of Section 51.715 of the Rules, is, to say the least, curious.

Interior only recently completed and delivered to GCI its mark-up of GCI's draft agreement. The parties had their first two meetings to negotiate terms on May 2 and 14, and have agreed on numerous dates for further negotiating sessions through the end of the month. According to GCI's own draft complaint (§ 44), Interior's mark-up "does not indicate any substantive disagreement that would render implementation of an interim interconnection arrangement for the Seward exchange impracticable." If this is true, Interior cannot understand why GCI has commenced litigation against Interior before the Commission and is seeking to invoke the extraordinary accelerated procedures under Section 1.730 of the Rules.

GCI at this point does not know whether the parties' negotiations through the end of this month will produce a completed interconnection agreement. It is even possible that the parties will agree to extend the negotiation period again beyond June 1. By invoking the accelerated litigation procedures available, at the Commission's discretion, under Section 1.730, GCI is demonstrating an unwillingness to comply in good faith with the terms of its agreement with Interior for negotiation of their interconnection agreement, and is undercutting and disrupting the negotiation procedure contemplated there. Indeed, GCI's correspondence with Interior reproduced as exhibits to the Request for Accelerated Docket demonstrate that GCI has been unclear and inconsistent as to what the purpose of its "interim interconnection" request is, and when it is intended to become effective. At best, GCI's request for an Accelerated Docket is premature and does not warrant the Commission's grant of the extraordinary recourse of an accelerated complaint procedure. This factor merits the Bureau's consideration under Section 1.730(e)(6) of the Rules.

IV. *Initiation of an Accelerated Docket is Inappropriate in Light of the "Overwhelming Disparity" of the Parties' Resources*

Although Interior believes that GCI's Request for Accelerated Docket lacks merit under the criteria of Section 1.730 as outlined above, if for no other reason the Commission should

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deny the request on the basis of the stark and overwhelming disparity of resources that GCI can muster to support the requested proceeding as compared to those of Interior. Interior is a small, rural local exchange company, serving 8,500 access lines in a series of remotely located, non-contiguous exchanges in Alaska. Interior's operating revenues in 2006 were \$14,777,212.³ Its parent organization dedicates 33 employees full-time to its needs, and allocates a portion of the time of five management-level employees among Interior and its affiliates. Interior serves very high-cost areas. Most of its wire centers are separated by vast distances and are accessible only by boat or plane.⁴

By contrast, GCI is the largest integrated provider of telecommunications services in Alaska. In 2006, it had annual reported revenues of \$477,300,000, some 34 times the revenues of Interior.⁵ In 2005, GCI was listed by the Alaska Department of Labor as the 12th largest employer in Alaska (the largest in the information sector), with 1,298 employees (Exhibit B attached).

In contrast to GCI, Interior and its parent organization have no in-house counsel. Interior's single external law firm, Dorsey & Whitney, LLP, acts on behalf of the company in its current negotiation of its interconnection agreement with GCI, and in all matters before the RCA and the Commission. The undersigned counsel is part of Interior's negotiating team with GCI. This stands in sharp contrast to GCI's retention of outside legal counsel to represent it specifically in the filing of the subject Request for Accelerated Docket.

Contrary to GCI's assertion in its Request for Accelerated Docket (page 7), Interior would suffer extreme hardship from being required to participate in a mini-trial on the issues raised in GCI's Request. Interior's three-member negotiating team, as well as the two external attorneys who complete that team, would be forced to divert time from negotiating the GCI interconnection agreement, in which they are now engaged at an advanced stage, in order to support the mini-trial process before the Commission. They simply could not support both activities; one would have to be suspended in order to engage in the other. As a result, not only should the Commission weigh the disparity of resources of the parties as a reason not to grant the Request for Accelerated Docket pursuant to subsection (e)(5), but the disruption to the statutory and contractual negotiation process currently underway should be equally considered as an "other factor" weighing against grant of GCI's Request under subsection (e)(6).

It should also be noted that all of the principals involved on behalf of both GCI and Interior in the negotiation and the prosecution of the parties' current dispute under Section

³ 2006 Annual Report of Interior Telephone Company, Inc., filed with the RCA on April 17, 2007.

⁴ Seward is one of the few Interior exchanges accessible by road.

⁵ See www.gci.com.

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51.715 are located in Alaska. The mini-trial procedure would, therefore, require either that these individuals travel to Washington, D.C. for the conduct of a mini trial, or that the Commission deploy resources to Alaska to conduct such a proceeding there. The Commission recognized that such logistical issues also warrant consideration in the Enforcement Bureau's determination of whether to grant a Request for Accelerated Docket.⁶

For all the foregoing reasons, Interior submits that GCI's Request for initiation of an Accelerated Docket is highly inappropriate under the circumstances of the parties' present interconnection negotiations, and that it does not meet the criteria for discretionary grant of such request by the Enforcement Bureau. For these reasons, Interior respectfully requests that GCI's Request be denied.

Respectfully submitted,


Stefan M. Lopatkiewicz
Counsel to Interior Telephone Company, Inc.

Enclosure

cc: Barbara Esbin, Enforcement Bureau
John T. Nakahata, Counsel for GCI

⁶ *Second Report and Order*, ¶ 82.